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1 RECORD OF ORAL HEARING

2
3 UNITED STATES PATENT AND TRADEMARK OFFICE

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5
6 BEFORE THE BOARD OF PATENT APPEALS
7 AND INTERFERENCES

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9
10 *Ex parte* ERIN E. DRAKELEY, MIKE AMATUCCI, LOU IANNUCCI,
11 JOHN C. MCDONOUGH and DAVID MCLURE

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15 Appeal 2009-003098
16 Application 09/371,687
17 Technology Center 3600

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20 Oral Hearing Held: September 9, 2009

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22 Before MURRIEL E. CRAWFORD, JOSEPH A. FISCHETTI, and
23 BIBHU R. MOHANTY, *Administrative Patent Judges*.

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25 ON BEHALF OF THE APPELLANT:

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33 The above-entitled matter came on for hearing on September 9, 2009 at the
34 U.S. Patent and Trademark Office, 600 Dulany Street, Alexandria, Virginia,
35 before Timothy J. Atkinson, Free State Reporting, Inc.

P R O C E E D I N G S

JUDGE CRAWFORD: Hello, this is hearing room A at the Board of Patent Appeals and Interferences.

MR. MALONEY: Good morning, my name is Dennis Maloney. I'm here for Appeal No. 2009-003098.

JUDGE CRAWFORD: All right. You are -- the hearing is before Judge Crawford, Judge Fischetti and Judge Mohanty.

MR. MALONEY: Thank you very much.

JUDGE CRAWFORD: You can begin whenever you're ready.

MR. MALONEY: Okay. Before I begin, I'd just like to introduce my colleague Christina McDonough, registration no. 64,612.

JUDGE CRAWFORD: All right.

MR. MALONEY: Before we get started this morning on discussing the claims, I'd like to point out that in the Appellant's specification, Appellant has defined some terms which are instrumental in understanding the scope and the nature of this invention. In particular, the word pretender, applications account and account identifier.

With respect to the rejection of the claims as being obvious over the combination of Roberts and Elmore (phonetic sp.), we'd like to point out that claim 83, for example, includes several steps which are not described by any combination of these two references. In particular, claim 83 includes two receiving steps. The first one, receiving pretender identification information, and the second one is receiving information selecting an application from a set of application and an account identifier of an account of a particular party.

1 In the Examiner's rejection of claim 83, the Examiner cites to the same
2 section of Roberts as teaching both of these receiving steps. However, when
3 one examines that section of Roberts, one finds that the description provided
4 by Roberts is not to using two separate entities to identify a set of
5 applications for -- to provide the account identifier representative of account
6 of a particular party. So whereas in claim 83 the first receiving step is
7 talking about pretender identification information, which for illustration
8 purposes say an employee of a financial institution that needs to review
9 someone's account, in the second receiving step of claim 83 has to do with
10 accessing the account of a particular party.

11 These two parties, if you will, are different. So essentially what these two
12 steps of claim 83 allow, and particularly set forth in the next step of claim
13 83, it allows a representative of for example a financial institution such as
14 Fidelity to access a customer's account without using the customer's logon
15 credentials but rather by using the employee's logon credentials. This allows
16 the customer's logon credentials to be kept secure and also allows the
17 institution such as Fidelity to track access of that customer's account by its
18 employees, its representative, for example, so that they can determine
19 whether or not the employees had done anything improper. But it allows the
20 employee, for example, when discussing the account with the customer to be
21 able to see the account just the way the customer sees it without ever having
22 to log in under the customer's login credentials.

23 And essentially the following step of claim 83 on the basis of a pretender
24 identification information and the account identifiers verifying that the
25 pretender is authorized to access the account, it essentially -- the critical
26 feature of claim 83 which distinguishes this clearly from Roberts. In

1 Roberts, we have a situation where we have something like, for example,
2 Webex (phonetic sp.) in which two computers will be sharing a view of
3 some content, and based upon the computer the -- Roberts downloads some
4 applets, downloads a service applet which allows the computer to connect
5 with the server that has the content, and it also downloads user applets. The
6 user applets are based upon the connection that's established between the
7 computers and is used to actually view the shared content.

8 But in each instance when people log on through the system, they're logging
9 on using their own credentials. So unlike the situation in claim 83 where the
10 pretender is logging on to the account to access the account using the
11 information that is the pretender, but the account actually belongs to a
12 particular party, in Roberts the administrator the service representative logs
13 on to the system using his or her own login credentials, and the user logs on
14 to the system using his or her own login credentials.

15 Does anyone have any questions at this point?

16 JUDGE CRAWFORD: Judge Mohanty?

17 JUDGE MOHANTY: Is it -- it's your contention that in the Roberts
18 reference that there is no second webpage, correct?

19 MR. MALONEY: It's not whether or not there's a second webpage.
20 It's that there's no selection of an application from a set of applications.
21 That's really the key feature. So we define an application in our
22 specification as financial applications that are accessible over a server, and
23 we give two examples of embodiments of those things from Fidelity. One is
24 the Webstation (phonetic sp.) and the other one is Net Benefits.

25 JUDGE MOHANTY: Can you cite me a location in your spec where
26 you find your --

1 MR. MALONEY: I believe that's in the background. Hold on one
2 second.

3 I'll ask you -- I have it cited here. That is on page 5, line 20 --

4 JUDGE MOHANTY: Okay, and I have one more question. You had
5 a dispute about this not being a reference or not being supported provisional
6 application. The Examiner has cited it just to show a password. Do you
7 have anything to say about that?

8 MR. MALONEY: With respect to whether or not it's a bona fide
9 reference because of whether or not it depends on the provisional, we will
10 stipulate for the record that the provisional covers passwords because
11 essentially, as I understand the Examiner's rejection, the Examiner really just
12 uses Elmore to show that passwords and logons were old in the art, and we
13 would not obviously challenge that.

14 However, what we would like to challenge is how the Examiner really
15 uses this well-known technique, and essentially the Examiner says that
16 Elmore was cited in the final action as evidence of what is old or well known
17 in the practice using account identifier with user identification information
18 to authorize access. Well, we don't really disagree with that. I mean that's
19 obviously old. But what we're saying is that the Examiner's argument does
20 not really address the claim feature. The argument would be true that the
21 Examiner makes if the pretender was using the pretender's password to
22 access the pretender's account or if a particular person's password was being
23 used to access the particular person's account.

24 But in our situation, that's not what's happening. In our situation, what we
25 have is the pretender is using his own login credentials to actually access

1 another individual's account. And that's not something that's old or well
2 known in the art period and specifically in Elmore.

3 JUDGE MOHANTY: Okay.

4 JUDGE CRAWFORD: Any questions, Judge Fischetti?

5 JUDGE FISCHETTI: No.

6 JUDGE CRAWFORD: We have no questions.

7 MR. MALONEY: Okay, so we'll continue. So continuing with this
8 limitation we just discussed, I believe that the Examiner has in fact
9 misconstrued this claim limitation, because as I said earlier, if the pretender
10 was using the pretender's password to access the pretender's account, or if
11 the pretender was using the particular person's password to access the
12 account, then that contention of the Examiner would be correct. However,
13 that's not what we have claimed. What we have claimed is that pretender
14 identification information is effectively information that's not associated
15 with the account but nonetheless being used to access the account of a
16 particular person.

17 So in other words, this allows the customer to keep his password
18 confidential or not, as would oftentimes be the case prior to this when
19 someone got onto the account, either sharing that password with the
20 customer representative or having the customer representative reset the
21 password to like a neutral password that the user could then switch back to
22 his original password. This allows the pretender, which is say the customer
23 representative, to get access to that person's account for temporarily while
24 that person's access is being tracked by the system and never require the
25 person whose account it is to actually divulge any confidential information.

1 So in essence, claim 83 is directed to an access method that uses
2 pretender identification information to gain access to a particular person's
3 account through set of applications. In other words, the applications being
4 the financial applications discussed on claim -- in page 5. And through this
5 information is provided that -- through this webpage, information is
6 provided that selects the application from a set of applications. That's also
7 not really described or suggested by Roberts, but Roberts has -- as I
8 understand the Examiner's rejection, Roberts has the applets that are
9 basically used to help a browser view shared content, and the Examiner
10 equates the applets to the application.

11 Well, aside from the fact that the applets really are not applications as we
12 defined them in the spec, more importantly the -- there is no selection of
13 these applications being produced from information from the webpage.
14 Rather, as I understand Roberts, Roberts determines which application -- I'm
15 sorry, which applet to send to the computer based upon the login credentials
16 of that computer. So that actually happens much earlier in the process and
17 doesn't happen as a result of the pretender sending any sort of selection of an
18 application to the server. The server knows -- in Roberts, the server knows
19 which person is logged in on which computer, whether it's the administrator
20 or a user or a service representative, and will send them the appropriate
21 applets based upon the nature of the person who is logged in, whereas in this
22 particular claim, we actually would present the user, which in this case
23 would be the pretender, with the fact that the person has an account that can
24 be viewed through either Net Benefits or Webstation, a plan sponsored
25 Webstation, and it's up to the pretender to select which one of those two
26 accounts that he wants to -- which one of those two applications he wants to

1 view the particular person's account through. So that type of selection is not
2 at all suggested by Roberts.

3 Finally, Roberts does not have anything that's really relevant to an account,
4 and particularly in the context as we define an account, as any type of
5 investment account such as an individual investment account or a company
6 investment plan. That's clearly not something that Roberts is concerned
7 with, although Elmore does certainly get into accounts, because Elmore is
8 directed to more financial application. We're not, you know, for a second
9 saying we're the inventors of accounts, but on the other hand, the basic
10 reference really is not dealing with any of these aspects. Really the only
11 thing the basic reference deals with is two people logging in to two -- on two
12 different computers to view shared content at the same time. That's not
13 exactly what we're trying to claim. What we're trying to claim is a user
14 logging into a computer on the basis of his own credentials to access the
15 account of another person, and that's not clearly described by any
16 combination of Roberts and/or Elmore.

17 So on that basis, I believe that, you know, we -- I have kind of covered most
18 I would like -- which I would like to cover in claim 83. I would like to just
19 turn for a moment to claim 85. In claim 85 requires retrieving access
20 information, identifies applications that are available through the first code
21 for use by the authenticated pretender again. So now this is the service
22 representative, if you will, who has logged in to a particular person's account
23 using his -- the pretender's or the service representative's information rather
24 than that person's information. And then you -- it also includes a feature
25 providing to a computer system associated with the pretender, the retrieved

1 access information for storage in an access information field of a text file
2 associated with the session of the pretender.
3 Now the Examiner in his Answer had truncated this feature to state that what
4 we were just claiming was providing to a computer system associated with
5 the pretender that retrieved access information for storage in the access
6 information field of a text file associated with the session of the pretender.
7 However, the feature that we're really trying to claim here is that we're
8 storing this information in a text file. Roberts does not instance -- for
9 example does not describe a text file, describes a relational database. But
10 irrespective of whether or not Roberts describes a text file, or if one can
11 characterize the relational database as a text file, Roberts does not describe
12 that this retrieved access information is stored in the database. Rather -- and
13 Elmore does not cure that deficiency.
14 So we believe that claim 83 is patentable over the combination of references,
15 and claim 85 further makes this invention patentable over the references. In
16 particular, the text file we're referring to is a table that has various fields
17 that's used with -- it's a ticket associated with a pretender session and is used
18 to track the activities of a pretender during that session. And we don't see
19 that as anything that's being described by the combination of Roberts and
20 Elmore.
21 Is there any -- are there any other questions?

22 JUDGE CRAWFORD: Any questions, Judge Fischetti?

23 JUDGE FISCHETTI: No, thanks.

24 JUDGE CRAWFORD: Judge Mohanty?

25 No, we have no further questions.

1 MR. MALONEY: Okay, well, thank you very much for the time and
2 have a good day.

3 JUDGE CRAWFORD: Yes, you too.

4 (Whereupon, the hearing concluded on September 9, 2009.)